

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re:	Wolin <i>et al.</i>	Confirmation No.:	7188
Appl No.:	09/815,597	Group Art Unit:	1644
Filed:	March 23, 2001	Examiner:	Schwadron, Ronald B.
For:	METHODS OF THERAPY FOR NON-HODGKIN'S LYMPHOMA		

Mail Stop Amendment
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

RESPONSE TO REQUIREMENT FOR ELECTION OF SPECIES

This is in response to the Office Action dated January 25, 2007, in which the Examiner has required an election of patentably distinct species of the claimed invention, that is election of “antibody” or election of “antibody fragment,” to which the claims shall be restricted if no generic claim is finally held to be allowable. Applicants hereby elect with traverse the species of “antibody.” All pending claims, i.e., claims 20-24, 26-38, and 40-44, are readable thereon. It is understood that upon the allowance of a generic claim, Applicants will be entitled to consideration of claims to additional species that are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 C.F.R. §1.141.

Applicants have made this species election with traverse. The pending claims are directed to methods for treating non-Hodgkin’s B-cell lymphoma in a human patient wherein the therapy comprises administration of an anti-CD20 antibody or a fragment thereof. The Office Action asserts that the antibody and a fragment of this antibody are patentably distinct species of the claimed invention. In so doing, it appears that the Examiner is viewing these therapeutic agents as members of a Markush group, where the type of antibody therapeutic to be administered is selected from the group consisting of an anti-CD20 antibody or a fragment of this anti-CD20 antibody.

Applicants point out that if the members of a Markush group are sufficiently few in number or so closely related that a search and examination of the entire claim can be made without serious burden, the Examiner must examine all the members of the Markush group in the claim on the merits, even though they may be directed to independent and distinct inventions. MPEP §803.02.

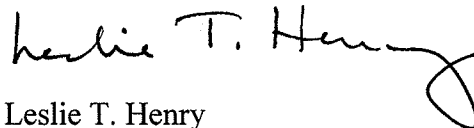
In the present case, Applicants respectfully submit that there would be no serious burden of search if the Examiner were to rejoin the claimed subject matter directed to the species of a fragment of an antibody, as the antibody itself will already have been searched and examined. If the quantity of references obtained presented an undue burden, Applicants point out that restriction can in fact be made at any time during prosecution. Thus, the Examiner has the opportunity to avoid any undue burden that could result from rejoinder of the claimed subject matter.

For the above reasons, Applicants respectfully request reconsideration and withdrawal of the requirement for an election of species with regard to the antibody and a fragment of this antibody.

Should the Examiner have further questions or comments with respect to examination of this case, it is respectfully requested that the Examiner telephone the undersigned so that further examination of this application can be expedited.

It is not believed that extensions of time are required. However, in the event that extensions of time are necessary to allow consideration of this paper, such extensions are hereby petitioned under 37 CFR §1.136(a), and any fee required therefore is hereby authorized to be charged to Deposit Account No. 16-0605.

Respectfully submitted,



Leslie T. Henry
Registration No. 45,714

CUSTOMER No. 00826
ALSTON & BIRD LLP
Bank of America Plaza
101 South Tryon Street, Suite 4000
Charlotte, NC 28280-4000
Tel Raleigh Office (919) 862-2200
Fax Raleigh Office (919) 862-2260

ELECTRONICALLY FILED USING THE EFS-WEB ELECTRONIC FILING SYSTEM OF THE UNITED STATES PATENT & TRADEMARK OFFICE ON February 23, 2007.

LEGAL01/13036122v1